

STATE OF MICHIGAN
COURT OF APPEALS

CRYSTAL L. ZALUCHA,

Plaintiff-Appellee,

v

MATTHEW A. ZALUCHA,

Defendant-Appellant.

UNPUBLISHED
November 1, 2002

No. 231441
Bay Circuit Court
LC No. 98-007080-DM

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce, specifically challenging the property distribution. We reverse and remand.

The judgment of divorce was entered on November 21, 2000, following a bench trial at which the value of defendant's business and the parties' share of the marital home was contested. Defendant purchased the marital home in September 1992 for \$68,900 by a land contract and made an initial down payment of \$30,000. About eight months after defendant purchased the house, plaintiff moved in with him. In June 1994, defendant refinanced the house to pay off the land contract. Plaintiff became a joint obligor on the mortgage, which was for \$44,000. On June 22, 1994, defendant conveyed his interest in the house to himself and plaintiff through a quitclaim deed. Plaintiff did not make any payment as consideration for the quitclaim deed. On July 13, 1994, the parties purchased a lot adjacent to their house. The parties then married on July 15, 1994. At the time of the divorce, the home was valued at \$89,000 and the mortgage balance was \$37,950.

Defendant was self-employed as a diesel mechanic, working out of premises owned by his mother, and incorporated as Matt's Services, Inc. since 1999. Defendant owned some tools used in the business that he estimated were worth about \$2,000. Neither party commissioned an appraisal of defendant's business nor did the trial court value the business.

In its property distribution, the trial court determined that defendant's premarital equity, consisting of his down payment and equity payments, was brought into the marriage as a gift by way of his quitclaim to plaintiff. The trial court found that the marital home's value was \$89,000 and the adjacent lot was worth \$4,000. The trial court awarded the marital home to plaintiff,

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

subject to the remaining mortgage. The trial court found that the marital equity was \$16,000 and awarded each party \$8,000 as their share of the equity. The trial court reduced defendant's share of the equity by \$3,000, which represented the value of certain vehicles that the trial court awarded to defendant to sell. The trial court also set off defendant's premarital equity (\$39,050) against the value of his equity in Matt's Services. Neither party was awarded alimony.

Defendant challenges the trial court's designation of his premarital equity as being subsumed in the marital estate. Specifically, defendant argues that notwithstanding the marital home being titled to both parties, his substantial down payment should have been designated separate property not subject to distribution.

When reviewing dispositional rulings in divorce cases, we must first review the trial court's factual findings under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). Reversal is only warranted where, after review of the entire record, the Court is left with a definite and firm conviction that a mistake was made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989). Thus, if the trial court's view of the evidence is plausible, this Court may not reverse. *Id.* If the factual findings are upheld, then this Court must determine whether the dispositional ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. Dispositional rulings should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 152.

We conclude that the trial court's factual finding that defendant's premarital down payment was a gift that was subsumed into the marital estate by virtue of his quitclaim deed to plaintiff was clearly erroneous. The undisputed testimony was that defendant purchased the house in September 1992 for \$68,900 and made an initial down payment of \$30,000 for it. When the house was refinanced in June 1994 and defendant conveyed the property by a quitclaim deed to himself and plaintiff, plaintiff did not give any monetary contribution or consideration for the deed. Defendant testified that the conveyance was not a sale or a gift, but was done because plaintiff wanted her name on the deed in contemplation of the marriage. There is simply no evidence that the premarital down payment was a gift that became part of the marital estate. Therefore, the trial court's factual finding that the down payment was brought into the marriage and was a gift is clearly erroneous because it is not supported by any evidence adduced at trial.

The first consideration when dividing property in divorce proceedings is a determination of marital and separate assets. MCL 552.19; *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). In *Reeves*, this Court held that the down payment, the equity accrued, and the appreciation of the property that occurred before the parties' marriage should have been considered the defendant's separate property and that the trial court erred in considering the entire equity value of the property as part of the marital estate. *Id.* at 496. Likewise, in the present case, the down payment, the equity accrued, and the appreciation of the property that occurred before the conveyance of the house to include plaintiff should have been considered defendant's separate property that was not part of the marital estate. On remand, the trial court may not consider the \$30,000 down payment and the equity accrued before the property was conveyed to both parties as part of the marital estate because this is defendant's separate asset that may not be invaded.

We also ascribe error to the trial court's failure to value defendant's business. Before making a property division, the trial court was required to make specific findings with respect to the value of the house, defendant's business, and any other property being distributed. *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 75; 471 NW2d 631 (1991). Error has been predicated on a trial court's failure to value a business interest. *Steckley v Steckley*, 185 Mich App 19, 23; 460 NW2d 255 (1990). Neither party offered any evidence regarding the actual value of the business, apparently because neither party wanted to commission an appraisal. Defendant presented the testimony of his income tax preparer, a certified public accountant, who stated that she did not value the business.

In making its findings, a trial court is afforded broad discretion in arriving at a valuation, and it may utilize expert testimony, *Young v Young*, 354 Mich 254, 257; 92 NW2d 328 (1958), or lay testimony, *Lee v Lee*, 191 Mich App 73, 76; 477 NW2d 429 (1991), or arrive at a decision within the range of proofs presented, *Sullivan v Sullivan*, 175 Mich App 508, 511; 438 NW2d 309 (1989). We agree with the trial court's valuation of the parties' marital residence at \$89,000 and the adjacent lot at \$4,000 because it comports with the proofs adduced at trial. Likewise, there was no error in trial court's finding regarding the marital equity because the evidence indicated that this was the increase in equity attributable to the period of the parties' marriage. The premarital equity, however, was set off against defendant's equity in his business. By its terms, MCL 552.19 allows the court to restore to either party property that has come to the other by "reason of the marriage" or make a money award instead of restoration.

The trial court's failure to value the business, when combined with the inclusion of defendant's separate property in the marital estate that was set off against defendant's equity in the business, resulted in a property division that inequitably favors plaintiff. On remand, the trial court must value the business and may not include defendant's separate assets as part of the marital estate. Because there was really no evidence offered with regard to the value of the business, the trial court may reopen the proofs so that an accurate valuation may be made. The trial court should then distribute the marital assets in a fair and equitable manner. *Sparks, supra*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof